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10 BEFORE THE  
11 CALIFORNIA BOARD OF OCCUPATIONAL THERAPY  
12 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. OT 2004 117

14 DAVID ALAN THURBER

15 3722 10th Avenue  
San Diego, CA 92103  
16 Occupational Therapist License No. OT 5072

ACCUSATION

17 Respondent.  
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19 Complainant alleges:

20 PARTIES

21 1. Heather Martin (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Officer of the California Board of Occupational Therapy, Department  
23 of Consumer Affairs.

24 2. On or about December 23, 2002, the California Board of Occupational  
25 Therapy issued Occupational Therapist License Number OT 5072 to David Alan Thurber  
26 (Respondent). Said license will expire on October 31, 2007, unless renewed.  
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## JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2570.26 states:

(a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, certificate, inactive license, inactive certificate, or limited permit.

(b) As used in this chapter, "license" includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this chapter.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. therein.

5. Section 2570.27. of the Code states:

(a) The board may discipline a licensee by any or a combination of the following methods:

(1) Placing the license on probation with terms and conditions.

(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the board, in its discretion, deems proper.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

6. Section 2570.28 states:

The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

(2) Repeated similar negligent acts in carrying out usual occupational therapy functions.

(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.

7. Section 2570.30 of the Code states:

The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**Statement of Alleged Facts:**

9. David Alan Thurber (Respondent) was hired on September 28, 2004 by CareerStaff Unlimited to work as one of their occupational therapists. CareerStaff Unlimited contracted with the San Diego City School District to provide occupational therapy services for San Diego City Schools. As part of Respondent's duties, he was to provide assessment, consultation and direct occupational therapy to students in special education programs. These children suffer from various intellectual and emotional challenges that require special attention to assist them in reaching their potential. Respondent's responsibility was to meet with and provide individual treatment and intervention with special needs children at their respective schools. Part of Respondent's duties required him to meet children directly at school, which required him to sign in and out of the school facilities on every occasion. In addition, Respondent was required to prepare and keep confidential accurate treatment records for each of his assigned special needs patients. The treatment record for each and every child was required to be maintained on the school premises for easy access and review. Each of the patient's records were maintained in a binder and were not allowed to be removed from the school.

10. As part of his accountability for work, Respondent was required to maintain and submit weekly time sheets to the San Diego City School District's Therapy Services Supervisor. Respondent's time sheets required him to document and certify the number of hours he worked during the week. Respondent executed his weekly time sheets by "certifying that the hours shown are correct and that the employee performed satisfactorily."

1           11.     Respondent was assigned to work forty hours a week with Rolando Park  
2 Elementary School's special education children. During the week of February 28, 2005 through  
3 March 4, 2005, Respondent certified that he worked thirty two hours at Rolando Park Elementary  
4 School. Respondent prepared and documented that he provided individual therapy services to  
5 several students, when in fact, Respondent was in Idaho. According to patient records prepared  
6 and submitted by Respondent, he conducted twenty four individual therapy sessions with  
7 Rolando Park Elementary special education students, when in fact, he was in Idaho.

8           12.     On March 31, 2005, Respondent billed for and certified that he performed  
9 thirteen therapy sessions, each lasting thirty minutes, with special needs children at Rolando Park  
10 Elementary. However, based upon review of patient records, the mandatory school sign in roster,  
11 and observation, Respondent was not at the school. Accordingly, he could not have conducted  
12 therapy sessions with children at the school.

13           13.     On or about April 7, 2005, San Diego City Schools Therapy Services  
14 Supervisor conducted an investigation at Rolando Park Elementary School to review  
15 Respondent's patient records and student working files. The investigation could not locate any  
16 of the patient records which were required to be maintained and kept at the school for easy access  
17 and review by staff. Based on the conspicuous absence of any patient records, it was impossible  
18 to verify or confirm that Respondent had provided therapy sessions to any of the special  
19 education children at the school.

20           14.     On April 22, 2005, the Board received a complaint providing information  
21 that Respondent engaged in fraudulent billing and falsification of patient records. An internal  
22 investigation and audit was performed by CareerStaff Unlimited and the San Diego City School  
23 District Therapy Services Department. It was determined that Respondent had falsely billed  
24 \$21,521.00 to the School District for therapy work and services that were never performed. In  
25 addition to falsifying his billing to the School District, Respondent falsified his hours working  
26 which resulted in him getting paid \$31,284.00 for his services when in fact, he should have only  
27 been paid \$17,352.00. CareerStaff Unlimited over paid respondent and could not collect that  
28 money from the School District. Accordingly, Respondent owes his employer, CareerStaff

1 Unlimited, \$13,932.00, which is the difference between what he was paid based upon his  
2 dishonesty (\$31,284.00) and what he should have been paid based upon the actual hours worked  
3 (\$17,352.00). In addition to the financial loss, Respondent's special education patients have  
4 detrimentally suffered as a result of his repeated acts of negligence, fraud, dishonesty and  
5 concealed absenteeism.

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Incompetence and/or Gross Negligence)

8 15. Respondent is subject to disciplinary action under section 2570.28(a)(1)  
9 for incompetence and/or gross negligence in the performance of his functions as an occupational  
10 therapist as set forth in the alleged facts above.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct-Repeated Acts of Negligence)

13 16. Respondent is subject to disciplinary action under section 2570.28(a)(2)  
14 for repeated similar negligent acts in carrying out usual occupational therapy functions as set  
15 forth in the alleged facts above.

16 THIRD CAUSE FOR DISCIPLINE

17 (Fraud-Substantially Related to Duties)

18 17. Respondent is subject to disciplinary action under section 2570.28(h) for  
19 committing fraudulent, dishonest, or corrupt acts that are substantially related to the  
20 qualifications, functions, or duties of a licensee as set forth in the alleged facts above.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Falsification of Patient Records)

23 18. Respondent is subject to disciplinary action under section 2570.28(k) for  
24 falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or  
25 hospital record or any other record as set forth in the alleged facts above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking or suspending Occupational therapist license Number OT 5072, issued to David Alan Thurber;
2. Ordering David Alan Thurber to pay the California Board of Occupational Therapy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Order David Alan Thurber to pay his former employer, CareerStaff Unlimited, \$13,932.00 in restitution which constitutes salary paid for which he did not earn;
4. Taking such other and further action as deemed necessary and proper.

DATED: 5/22/07



HEATHER MARTIN  
Executive Officer  
California Board of Occupational Therapy  
Department of Consumer Affairs  
State of California  
Complainant

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